

120

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IFW 5/6/04

In re Patent Application of

DUPUIS et al

Serial No. 09/341,241



Atty Dkt. 2350-73

C# M#

TC/A.U.

1617

Examiner: Sharareh

Filed: September 14, 1999

Date: May 3, 2004

Title: COSMETIC OR DERMATOLOGICAL COMPOSITION IN THE FORM OF A GEL,  
CONTAINING IN

**RESPONSE UNDER RULE 116  
EXPEDITED HANDLING PROCEDURES**

Corres. and Mail  
**BOX AF**

**Mail Stop AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**RESPONSE/AMENDMENT/LETTER**

This is a response/amendment/letter in the above-identified application and includes an attachment which is hereby incorporated by reference and the signature below serves as the signature to the attachment in the absence of any other signature thereon.

 **Correspondence Address Indication Form Attached.****Fees are attached as calculated below:**

Total effective claims after amendment	0	minus highest number		
previously paid for	20	(at least 20) =	0	x \$ 18.00
				\$ 0.00

Independent claims after amendment	0	minus highest number		
previously paid for	3	(at least 3) =	0	x \$ 86.00
				\$ 0.00

If proper multiple dependent claims now added for first time, add \$290.00 (ignore improper)	\$ 0.00
--	---------

Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s) (\$110.00/1 month; \$420.00/2 months; \$950.00/3 months; \$2,010.00/5 months)	\$ 950.00
---	-----------

Terminal disclaimer enclosed, add \$ 110.00	\$ 0.00
---	---------

<input type="checkbox"/> First/second submission after Final Rejection pursuant to 37 CFR 1.129(a) (\$770.00)	\$ 0.00
<input type="checkbox"/> Please enter the previously unentered , filed	
<input type="checkbox"/> Submission attached	

<b>Subtotal</b>	\$ 950.00
-----------------	-----------

If "small entity," then enter half (1/2) of subtotal and subtract	-\$ 0.00
<input type="checkbox"/> Applicant claims "small entity" status. <input type="checkbox"/> Statement filed herewith	

Rule 56 Information Disclosure Statement Filing Fee (\$180.00)	\$ 0.00
--	---------

Assignment Recording Fee (\$40.00)	05/04/2004 CCHAU1 00000140 09341241	\$ 0.00
	01 FC:1253	950.00 0P

Other:		\$ 0.00
--------	--	---------

<b>TOTAL FEE ENCLOSED</b>	\$ 950.00
---------------------------	-----------

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140. A duplicate copy of this sheet is attached.

1100 North Glebe Road, 8<sup>th</sup> Floor  
Arlington, Virginia 22201-4714  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100  
BJS:pp

NIXON & VANDERHYE P.C.  
By Atty: B. J. Sadoff, Reg. No. 36,663

Signature: 



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of

DUPUIS et al Atty. Ref.: 2350-73; Confirmation No.

Appl. No. 09/341,241 TC/A.U. 1617

Filed: September 14, 1999 Examiner: Sharareh

For: COSMETIC OR DERMATOLOGICAL COMPOSITION IN THE FORM OF A GEL,  
CONTAINING IN

\* \* \* \* \*

May 3, 2004

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**RESPONSE UNDER RULE 116**

Responsive to the Office Action dated June 3, 2003, entry and consideration of the following remarks as well as the attached comparative tests, are requested. The period for response has been extended up to and including May 3, 2004, by submission of the attached three (3) month extension fee and three (3) month petition fee. A Notice of Appeal was filed December 3, 2003.

Claims 15-18 and 20-29 are pending.

The Section 103 rejection of claims 15-18 and 20-29 over Almaric (U.S. Patent No. 5,670,471), is traversed. Reconsideration and withdrawal of the rejection are requested in view of the following distinguishing comments as well as the attached comparative tests.

This Page Is Inserted by IFW Operations  
and is not a part of the Official Record

## **BEST AVAILABLE IMAGES**

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images may include (but are not limited to):

- BLACK BORDERS
- TEXT CUT OFF AT TOP, BOTTOM OR SIDES
- FADED TEXT
- ILLEGIBLE TEXT
- SKEWED/SLANTED IMAGES
- COLORED PHOTOS
- BLACK OR VERY BLACK AND WHITE DARK PHOTOS
- GRAY SCALE DOCUMENTS

**IMAGES ARE BEST AVAILABLE COPY.**

**As rescanning documents *will not* correct images,  
please do not report the images to the  
Image Problem Mailbox.**

DUPUIS et al  
Appl. No. 09/341,241  
May 3, 2004

composition of the presently claimed invention (composition A) exhibits non foaming ability together with a satisfying consistency and melting property when touched.

Consequently, these data are submitted to demonstrate the unexpected beneficial results obtained by the non-ionic nature of the surfactant and of the ratio R.

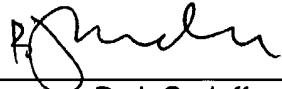
In view of the all the above and attached, the presently claimed invention is submitted to be patentable over the cited patent and withdrawal of the Section 103 rejection is requested.

The claims are submitted to be in condition for allowance and a Notice to that effect is requested. The Examiner is requested to contact the undersigned if anything further is required in this regard.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_



B. J. Sadoff

Reg. No. 36,663

BJS:pp  
1100 North Glebe Road, 8th Floor  
Arlington, VA 22201-4714  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100

### COMPARATIVE TESTS

The tests have been realized by preparing four leave-in care gels comprising:

- 1 g. of acrylic acid/C<sub>1</sub>-C<sub>18</sub> alkyl acrylate/stearyl methacrylate polyoxyethylenated with 20 moles of ethylene oxide terpolymer, commercialized under the name of "Acrysol ICS-1<sup>®</sup>" by the company ROHM & HAAS,
- 2 g. of isohexadecane commercialized under the name of "Permethyl 101A<sup>®</sup>" by the company BAYER SILICONE,
- a surfactant,
- 2-amino-2-methyl-1-propanol in an amount allowing to adjust the pH to 7.5, and
- water in an amount to adjust the formulation to 100 g.

(The amounts indicated above are expressed as active material.)

The corresponding gel formulations A, B, C and D are different one to the other either by the nature of the surfactant or by the amount of the surfactant, and thus by the ratio non ionic surfactant / non crosslinked polymer.

The table below shows the nature of the surfactant and its amount for the 4 prepared gels.

	GEL A	GEL B	GEL C	GEL D
Surfactant	Tween 20 <sup>®*</sup> (non ionic surfactant)	Tween 20 <sup>®*</sup>	Sodium lauryl ether sulfate (anionic surfactant)	Cetrimonium chloride (cationic surfactant)
Amount (g. A.M.)	0.1	0.6	0.1	0.1
R**	0.1	0.6	0	0

\* Lauryl ester of sorbitol oxyethylenated with 20 moles of ethylene oxide.

\*\* R = ratio of non-ionic surfactant to non-crosslinked polymer.

- can be used in compositions which may be chosen from foaming compositions such as, *inter alia*, shower gels, make up removing gel for the face,...(col. 4, lines 44-...),

- may act as a foaming surfactant (col. 4, lines ...-51),  
- is present in the composition between 2 and 15% by weight (col. 3, lines 52-53), the concentrate contains at least 60% of alkylglycoside (col. 1, lines 65-66), consequently the amount of alkyl glycoside is over 1% by weight,

Accordingly, the cited patent is believed to teach away from using a non ionic surfactant in an amount less than 1%, to obtain non foaming aqueous gels.

Furthermore, Amalric states that a composition including such a concentrate does not need to be supplemented with a thickening polymer as a stabilizing agent (see col. 4, 30-36).

Thus, Amalric also is believed to teach away from using such a thickening agent. Moreover, the cited patent does not provide motivation for selecting the specific copolymer required according to the presently claimed invention, i.e., having hydrophobic chains for establishing a physical cross-linking.

Finally, the Amalric patent is silent about a specific ratio between the alkyl glycoside and a non-crosslinked polymer including hydrophobic chains. Consequently, the cited patent would not have led one of ordinary skill in the art to consider this parameter to be relevant for obtaining aqueous gels exhibiting improved properties such as those discussed above.

However, these characteristics are important to achieve a composition with improved properties as is shown in the attached comparative tests, in which only the

Initially, the Applicants note that the presently claimed invention provides a cosmetic composition in the form of an aqueous gel. More specifically, the aqueous gel of the claimed invention contains the following:

- a) at least one non-crosslinked acrylic polymer having a C<sub>8</sub>-C<sub>32</sub> hydrophobic chain, in an amount of 0.8 to 20%.
- b) as sole surfactant(s), one or more non-ionic surface active agent(s) in an amount of less than 1% by weight with respect to the total weight of the composition, the ratio (R) of surfactant to non-crosslinked polymer varying from 1/20 to 1/5, and
- c) at least one insoluble conditioning agent selected from silicones, hydrocarbons, fatty alcohols and fatty esters, in an amount of 0.01 to 20% by weight with respect to the total weight of the composition.

The problem to be solved by the claimed invention is to control the texture of the gels for improving its prehension by the user and render them more pleasant on and easier to apply to the skin and more particularly the hair (page 1, lines 25-29).

A further purpose of this invention was to provide aqueous gel type compositions free from foaming when applied.

The purposes are achieved according to the instant invention because of the specific choice of the 3 previous components mixed together in the specified amounts.

The insoluble conditioning agent is necessary for providing the desired gel properties as well as good melting properties when touched.

The choice of a non-cross-linked acrylate copolymer having hydrophobic chains and a non-ionic surfactants provides a convenient texture structure for the gel rendering it easy to pick-up by the user, i.e., not brittle like prior gels but in contrast with good flowing properties.

By the choice of both compounds, the claimed invention provides a physical cross-linking which is more advantageous than a chemical cross-linking (such as would be provided by cross-linked polymers). This physical cross-linking takes place between the hydrophobic chains of the associative polymers and the micelles of the non-ionic surfactant, the latter being more efficient than anionic or cationic surfactants and optimal for the amount and ratio required according to the invention.

The cited patent teaches the use of a concentrate of specific alkylglucosides (col. 4, lines 9-10).

The cited patent is mainly concerned with providing a pearlescent appearance to an emulsion type composition and more particularly foaming composition.

Accordingly, the applicants submit that the teaching of the cited patent is far removed from the problem considered and solved according to the presently claimed invention.

More precisely, Amalric teaches that the concentrate:

- can be used as pearling agent in order to provide a pearling effect which is homogenous and stable all the time (col. 2, lines 17-19),